

**IN THE MATTER OF:**

**Case No. 20-13**

**Michael Yaune**,

**License No. 1028407**

**Respondent.**

## Order Reinstating License

This order is issued upon the Respondent's request for reinstatement on the basis that the reasons for the suspension no longer exist and it will be in the public interest for the license to be reinstated.

Michael Yaune y was alleged to have been on school premises while under the influence of alcohol in violation of 282 IAC 25.3(2)b. Mr. Yaune y was found in violation by a proposed decision and issued a written reprimand, completion of an ethics course and to get a substance abuse evaluation. Mr. Yaune y has completed the ethics course for educators and a substance abuse evaluation. He is requesting reinstatement of his license.

By Order issued November 18, 2020, the Board indefinitely suspended the Respondent's teaching license. Pursuant to Board rule 282 I.A.C. 11.34, any person whose license has been suspended "may apply to the board for reinstatement in accordance with the terms and conditions of the order of the suspension."

## ORDER

**THEREFORE**, the Board hereby orders that the indefinite suspension of Respondent's license is lifted. Respondent's license is hereby reinstated.

Dated this 10<sup>th</sup> day of December, 2021.

Michael D. Cavin, Executive Director  
On behalf of the Board

Copies to:

Michael Yaune (first-class mail and certified mail)  
RESPONDENT

Katie Schoolen (electronic mail)  
ATTORNEY FOR RESPONDENT

Kristi Traynor (electronic mail)  
ATTORNEY FOR STATE

**IOWA BOARD OF EDUCATIONAL EXAMINERS**

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IN THE MATTER OF:

**MICHAEL YAUNEY,**

RESPONDENT.

) BoEE case no. 20-13  
) DIA case no. 20BEE0033  
)  
) **FINAL ORDER**  
)  
)

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This matter came before the Board of Educational Examiners upon Complaint. An investigation was conducted and the Board found probable cause to move the case forward to hearing. The hearing took place before Administrative Law Judge David Lindgren on August 27, 2020. On September 2, 2020, Judge Lindgren issued a Proposed Decision. The Proposed Decision was served upon the Respondent, the Assistant Attorney General prosecuting the case, and the Board. The Respondent filed a timely appeal seeking review of the Proposed Decision by the full Board.

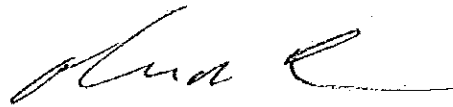
The Board issued a briefing schedule, and both parties submitted briefs for the Board's review. The Board considered the briefs and Proposed Decision at its meeting on November 18, 2020.

The Board moved to adopt the Proposed Decision as its final decision and issue a final order incorporating the Proposed Decision as the decision of the Board.

**ORDER**

**THEREFORE**, the Proposed Decision in the above-captioned case is hereby incorporated into this order and adopted as the Board's final decision.

Dated this 18th day of November, 2020.



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Michael D. Cavin, Interim Executive Director  
On behalf of the Board

Copies to:

Michael Yaune (first-class mail and certified mail)  
RESPONDENT

Katherine E. Schoolen (electronic mail)  
ATTORNEY FOR RESPONDENT

Jesse Ramirez (electronic mail)  
ATTORNEY FOR STATE

IOWA BOARD OF EDUCATIONAL EXAMINERS

SEP 02 2020

In the Matter of:	)	DIA No. 20BEE0033
	)	Case No. <del>21</del> -13
MICHAEL YAUNEY	)	20
	)	
Respondent.	)	<b>PROPOSED DECISION</b>

**STATEMENT OF THE CASE**

On January 27, 2020, Dr. Vickie Murillo, Superintendent of the Council Bluffs Community School District, filed a Complaint against Respondent Michael Yauney with the Iowa Board of Educational Examiners (the Board). The Complaint alleged that Respondent had been under the influence of alcohol while at school on January 14, 2020.

The Board later found probable cause to proceed to hearing and issued a Notice of Hearing and Statement of Charges. In particular, it charged that Yauney had been under the influence of alcohol while on school premises in violation of 282 Iowa Administrative Code 25.3(2)(b).

A hearing was held on August 27, 2020 at the Wallace State Office Building in Des Moines, Iowa. The State was represented by Assistant Attorney General Jesse Ramirez. Respondent Michael Yauney appeared along with his attorney Jay Hammond. State's Exhibits 1-4 and Respondent's Exhibits A and B were entered into the record without objection. Officer Michael Hernandez testified for the State while Bridget Bellows, Gary Milbourn, and Amanda Jens testified for Respondent. Respondent testified as well. After a brief oral argument, the matter was considered fully submitted.

Prior to hearing, counsel for both parties stipulated to the fact that there was a violation of the relevant ethics rules and that the sole issue to be resolved following hearing concerns the appropriate measure of discipline.

**FINDINGS OF FACT**

Respondent Michael Yauney has been a teacher in the Council Bluffs Community School District since August of 2016, teaching freshman science, physics, and chemistry. He holds a standard license (folder number 1028407) and has endorsements for K-12 athletic coach, 5-12 biological science, 5-12 chemistry, 5-12 basic science, and 5-12 all science.

By all accounts, Yauney is an exceptional teacher with a reputation for going above and beyond to develop relationships with troubled students and who excels at classroom management and teaching. His current principal, Bridget Bellows, described him as hard working, kind, dedicated, upstanding, and one who supports his students.

Likewise, his former assistant principal, Amanda Jens, described him as energetic, eager to teach, involved, organized, and knowledgeable about his students. Yauney has sponsored clubs, including the gay-straight alliance, and he works as a line judge at volleyball games. He communicates well with parents and kids enjoy taking his classes. He also is known to put his students first and has high expectations for them.

On the evening of January 13, 2020, Yauney reportedly went to a house party with some friends to watch the national championship college football game. This was a Monday night. According to Yauney, he consumed five mixed drinks, including Crown and Cokes and vodka tonics, before a friend drove him home around 2:00 a.m.

The next morning, Yauney, who lives in downtown Omaha and who does not own a vehicle, called an Uber for a ride to school. Although school started at 8:05 a.m., he only arrived two to three minutes before that time. While driving him, the Uber driver detected a strong odor of alcohol coming from Yauney and called the school to make it aware. Having been informed, one of the school's principals proceeded to Yauney's classroom, where he had been teaching between 25 and 28 students, and removed him from the class.

Yauney readily admitted that he had been drinking the night before while watching a football game. School resource officer Michael Hernandez was called in to administer a preliminary breath (PBT) test to Yauney. The result of that test was .233. According to Officer Hernandez, who in the past was certified as a drug recognition expert and who has been involved in many alcohol-related investigations, this would indicate that Yauney was severely intoxicated. In his experience, a person who tests this high would present as a concern to the safety and wellbeing of any student being taught by him. An alcohol concentration of .233 would significantly affect a person's speech, memory, coordination, and balance. Although he could have charged Yauney with public intoxication, he chose not to do so.

Following this PBT, school personnel drove Yauney to the hospital for additional chemical testing. There, he took two additional breath tests. The result of both of those tests was .187. He was then driven home and informed that he would be contacted following an investigation. During this time, Yauney was placed on paid administrative leave.

This investigation was completed by the following day and the results communicated to Yauney by letter. In summary, the investigation concluded that Yauney had violated Board Policy 410, which prohibits being under the influence of alcohol in the workplace, and Board Policy 402, which requires employees to exhibit reasonable professional judgment. He was also ordered to serve a two-day unpaid suspension and issued a Last Chance Agreement. Under this Last Chance Agreement, Yauney was required to have weekly check-in meetings with his supervisor, to obtain counseling and provide written verification of attendance, submit to a substance abuse evaluation, and submit to reasonable suspicion testing. The Agreement further provided that any violation would be grounds for termination.

Although this was not addressed at the hearing, Yauney's Letter of Reprimand also noted that he had "communicated with a parent on the evening of January 13, 2020, and communicated with a staff member on the morning of January 14, 2020, via email. These emails contain multiple spelling errors and were done the period of time you were intoxicated." This again shows he was intoxicated while undertaking his professional responsibilities.

Dr. Vickie Murillo, Superintendent of the Council Bluffs Community School District, subsequently filed a Complaint against Yauney with the Iowa Board of Educational Examiners (the Board). The Complaint alleged that Respondent had been under the influence of alcohol while at school on January 14, 2020. The Board then found probable cause to proceed to a hearing. In particular, it charged that Yauney had been under the influence of alcohol while on school premises in violation of 282 Iowa Administrative Code 25.3(2)(b).

The day after being suspended, as required by his Last Chance Agreement, Yauney underwent a substance abuse evaluation at Heartland Family Service. Yauney reported to the evaluator his history of alcohol use, including that he had been convicted of driving while under the influence in 2010 and 2012. After receiving his second DUI, he could no longer find work as an X-ray technician so he started working at a bar. After completing treatment, he remained sober for a few months, but then began drinking again. In particular, he reported that afterwards, he would drink once per week on the weekends. He also told the evaluator that he usually drinks 2-3 glasses of wine but that on January 13 he drank 5-6 mixed drinks, which he was not used to.

The evaluator diagnosed Yauney with moderate alcohol use disorder, but also found that he was a low risk for relapse. He noted that Yauney appeared embarrassed and remorseful about the incident, and that he acknowledged a mistake. The evaluator also noted Yauney's large, healthy support system and his internal motivation to seek treatment and maintain employment. The evaluator found "no immediate safety risk identified with Michael returning to work." In conclusion, he recommended individual outpatient counseling.

Yauney testified at the hearing that he has attended AA meetings a few times in the past, including after his DUI convictions, but did not find it very helpful. This is partly why he decided to instead attend individual counseling sessions, which he started only a week or two after the incident. He has been working with Brian Heidvogel, with whom he has developed a good relationship, and believes it has been a positive source of guidance. His goal is complete abstinence from alcohol. To achieve that, they have been working on identifying Yauney's stressors and triggers. By the date of this hearing, Yauney had attended 15 outpatient sessions with Heidvogel and he hopes to continue until his objectives are met. He has no particular end-date planned.

Specifically, Yauney has identified that stress is a significant trigger for his alcohol use. He has also identified his singular focus on work and the constant attention of students as a trigger. To address these issues, he has stopped working at home on the evenings and has begun eating lunch alone, away from students. He has also focused on

increasing his alone time and has also been having more physical activity, especially running and volleyball. According to Yaune, since the incident he has not been intoxicated, but every couple of weeks he may have a glass of two of wine. His last drink was near the beginning of July. He does consider these instances to constitute "relapses" along the way toward his goal of abstinence. He does not consider himself to be an alcoholic but he does not disagree with the diagnosis of moderate alcohol use disorder.

Abe Lincoln Principal Bridget Bellows expressed great concern with the possibility that Yaune's license might be suspended, describing it as a "major headache" for her. Yaune is able to teach earth science, which can be a very difficult area to hire because so few teachers have that endorsement. With the school year just starting, she has real concerns about being able to hire a replacement. Yaune is also teaching the school's virtual component, so he is a critical part of Abe Lincoln's response to the pandemic. Bellows also has no concerns with Yaune continuing to teach and believes he is not a danger to his students. She feels the January 14 incident was out of character for him and believes that he has taken responsibility for his actions. She knows of no other concerning incidents with Yaune.

Yaune's former assistant principal, Amanda Jens, likewise would have no concerns about student or teacher safety and welfare were he to remain in the classroom. In her estimation, she also believes this incident was out of character for him, although she had heard whispers about his possible previous alcohol incidents.

### CONCLUSIONS OF LAW

The legislature created the Board of Educational Examiners with exclusive authority to license practitioners and develop a code of professional rights and responsibilities, practices and ethics. The Board has promulgated a Code of Professional Conduct and Ethics at 282 Iowa Administrative Code Chapter 25. The standards of professional conduct and ethics promulgated by the Board require that licensees abide by all federal, state, and local laws applicable to the fulfillment of professional obligations; failure to do so constitutes unprofessional and unethical conduct which can result in disciplinary action by the Board.<sup>1</sup> Additionally, the Board has the authority to enforce its rules through revocation or suspension of a license, or by other disciplinary action against a practitioner licensed by the Board.<sup>2</sup>

As noted, Count I alleges a violation of 282 Iowa Administrative Code section 25.3(2)(b), which prohibits:

[b]eing on school premises or at a school-sponsored activity involving students while under the influence of, possessing, using, or consuming alcohol.

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<sup>1</sup> 282 Iowa Administrative Code (IAC) 25.3.

<sup>2</sup> Iowa Code § 272.2 (2019).

In particular, it is alleged that Yauney appeared at school and was in fact in the process of teaching a class while under the influence of alcohol. Upon review of the record, and based on the stipulation of Respondent's counsel, this allegation is supported. Specifically, Yauney was under the influence of alcohol while at work on January 14, 2020. The only issue remaining to be decided is the appropriate discipline. The State requests the following:

- A one-year suspension of his license.
- A written reprimand.
- Completion of an ethics course.
- That Yauney provide the Board with his discharge evaluation upon completion of his treatment.
- That Yauney have the burden at the end of the suspension to prove his progress with alcohol treatment to establish that he is safe to return to teaching.

Yauney believes that a written reprimand is sufficient and that no suspension is warranted.

In determining the appropriate discipline, the Board is to consider<sup>3</sup>:

1. The nature and seriousness of the crime or founded abuse in relation to the position sought;
2. The time elapsed since the crime or founded abuse was committed;
3. The degree of rehabilitation which has taken place since the crime or founded abuse was committed;
4. The likelihood that the person will commit the same crime or abuse again;
5. The number of criminal convictions or founded abuses committed; and
6. Such additional factors as may in a particular case demonstrate mitigating circumstances or heightened risk to public safety.

Where a violation is found, the Board has the authority to impose the following disciplinary sanctions:

1. Revoke a practitioner's license, certificate or authorization.
2. Suspend a practitioner's license, certificate or authorization until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board, or for a specific period, a practitioner from engaging in specified practices, methods, or acts.
4. Require additional education or training.
5. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
6. Issue a public letter of reprimand.

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<sup>3</sup> 282 IAC 25.3(1)(b)(2).

7. Order any other resolution appropriate to the circumstances of the case.<sup>4</sup>

The State invited the undersigned to review a number of previous teacher discipline cases, including Case Numbers 18-23, 18-94, 18-121, 18-132, 19-30, and 19-63.

Certainly, in one very important respect these cases are instructive, in that they all generally involve a finding that the licensee violated rule 25.3(2)(b) which prohibits the use or possession of alcohol or being under the influence while at school. That is the same provision under which Mr. Yauney has been charged. Save for one of these cases, a two-year suspension was ordered. The other case involved a three-year suspension. Here, the State only seeks a one-year suspension, largely in recognition of Yauney's post-violation efforts at rehabilitation.

However, the utility of those cases is limited. In contrast to this matter, those cases all involved a settlement. There was no contested case hearing and consequently no factual record was made. There is no way from these decisions to gauge the gravity or extent of the violation. There is no way to tell if any harm befell students or other staff, whether the licensee had a history of alcohol offenses, or whether this was a first-offense. Likewise, given the lack of record and factual findings, there is no way to measure the licensee's rehabilitation, acceptance of responsibility, or likelihood of re-offending. Here, in contrast, we have a fully developed factual record, two represented parties, and competing arguments made in an adversarial setting. For these reasons, while I do find the cases cited by the state to be helpful, they simply are not dispositive. The unique facts of this case demand that it be considered on its own merits

Yauney's counsel presented the undersigned with a different decision, Case Number 16-160, that he believes is more instructive. In that matter, there was a contested hearing, competing arguments, and factual findings. There, the licensee consumed alcohol to the point of intoxication while working parking lot duty at a high school football game. In addition, the record showed that the licensee admitted he was an alcoholic and that his post-incident actions "demonstrated a deep commitment to maintaining sobriety and a healthy lifestyle." There was also evidence of a strong support system and significant discipline by the school itself. In light of this, the licensee was issued a public letter of reprimand and ordered to complete an ethics course. There was no suspension. Upon its review, the Board of Educational Examiners accepted the proposed decision without modification. Like the decisions cited by the State, I have reviewed and considered this decision.

Here, as in any discipline case, in determining an appropriate sanction, the Board's primary concern must be the protection of students. The sanction should provide proportionate punishment for the particular violation, make provision for any necessary remedial actions, and deter other practitioners from engaging in similar behavior. I also have considered guidance from previous board decisions in this inquiry.

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<sup>4</sup> 282 IAC 11.33.



As an initial matter, the January 14 incident must be characterized as a serious violation of a teacher's ethical norms, and it represents a disturbing lack of judgment. Not only did Yauney go to work in a highly intoxicated state, he also supervised at least 25 students and presumably would have continued to do so all day had he not been reported by the Uber driver. Parents expect and demand a clearheaded and temperate teacher. While ninth graders are mature enough to self-protect, the thought of an intoxicated role model supervising them is concerning on many levels. Yauney's apparent excessive level of intoxication, as witnessed by his BAC results, speaks for itself. Considering the facts of the violation alone, this violation certainly deserves a significant measure of discipline.

Compounding the seriousness of the offense, on one particular area I believe Yauney's testimony was not credible. The record reflects that sometime around 9:00 a.m. on January 14 he tested at .233 on a PBT. And then, some undetermined amount of time later, he registered at .187 on a second test at the hospital. Regardless of which of these was accurate [and they could have both been accurate at the time, given the time lag and the dissipation of alcohol in one's body] they are extremely high. In fact, this is an alarming alcohol concentration to have at any time, let alone at 9:00 in the morning.

In light of this, I simply do not believe that Yauney only consumed five mixed drinks the previous night at the party. For him to register that high at 9:00 a.m. after reportedly leaving the party at 2:00 a.m., his alcohol concentration must have been astronomical at 2:00 a.m. It is inconceivable that he could have still tested that high at 9:00 a.m. on only five drinks more than seven hours prior. I either believe Yauney consumed significantly more than five regular mixed drinks or that he actually did consume alcohol on the morning of January 14 before school. Those are the only two reasonable explanations for either a .233 or .187 at 9 o'clock in the morning. This leads me to believe Yauney was involved in a much more significant drinking event than he confessed to. Again, this argues for a significant consequence.

The record also reflects that Yauney does have a longstanding and serious problem with alcohol, dating back to at least 2010 when he received his first of two DUIs. A DUI, by its very nature, reflects a significant public safety concern. Similarly, supervising and teaching children while in an extremely intoxicated state holds the potential to impact those students either physically or emotionally. While he disputes the term "alcoholic," he does admit the accuracy of his diagnosis for moderate alcohol use disorder. But, I am also troubled by the fact that he continues to drink alcohol, admitting that on occasion he still drinks a glass of wine or two. As even Yauney admitted, these must be characterized as relapses. And while relapses are certainly part of the normal and expected treatment progress, they are indeed still a tip-off that his drinking issues may not be totally behind him and that there is at least the potential for a repeat incident.

Again, these factors argue in favor of a significant sanction, perhaps approaching the two-year or three-year suspensions handed down in the decisions cited by the State. However, this record is also laden with mitigating factors. Undoubtedly, Yauney is a gifted teacher with a history of accomplishment and success at Abe Lincoln High School. He is particularly adept at connecting with hard-to-reach and troubled students. He is

energetic, focused, and his students enjoy his classes. He shares his energies and passion in extracurricular activities. His teaching competence is unquestioned.

Yauney has also taken seriously his rehabilitation efforts. He has gone above and beyond what his school required him to do as part of his Last Chance Agreement. He has communicated his efforts to school supervisors in a timely and complete fashion. His goal of complete abstinence is to be commended. His counselor, with whom Yauney appears to have formed a strong professional bond, noted that

Michael has been open to processing feelings of guilt and shame, exploring the impact of past experiences on these feelings as well as alcohol use. He has reported a decrease in alcohol cravings, frequency/volume of use, and overall stress level since engaging in counseling.

Yauney's principal expressed no concern whatsoever with him returning to school this year. She believes he is not a danger to his students. She feels the January 14 incident was out of character for him and believes that he has taken responsibility for his actions. She knows of no other concerning incidents with Yauney. She would not have had him back this year if she felt any concerns with his behavior or for a repeat offense. Likewise, Yauney's former assistant principal likewise would have no concerns about student or teacher safety and welfare were he to remain in the classroom. She also believes this incident was out of character for him.<sup>5</sup>

As a final matter, as much as I can sympathize with and appreciate the concerns expressed by Principal Bellow regarding the impact any suspension would have on the students and on her ability to hire a replacement at this late date, I simply cannot and do not consider it in making my decision here. The Board's rules set out various factors to consider in imposing discipline. Those factors focus on the violator him or herself, the nature of the violation, and the impact on student and public safety. Other considerations extraneous to these factors, such as any hardship caused to administrators and students, must be secondary at best.

In consideration of all these factors, I find that a one-year suspension of Yauney's license is appropriate. While the many cases cited by the State involved two-year suspensions, the rehabilitation and other mitigating circumstances present in the record argue for a lesser sanction. However, the seriousness of the conduct and the potential for harmful effects on the students must call for something more than a simple reprimand.

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<sup>5</sup> It bears noting that both Bellows and Jens believed this incident was "out of character" for Yauney. However, it is doubtful that either was aware of this two DUIs or other drinking issues. Accordingly, it would be difficult to accurately form an opinion on one's character without full knowledge of the relevant parts of the person's past that make up his character.

**ORDER**

IT IS THEREFORE ORDERED that the license issued to Respondent Michael Yauney shall be INDEFINITELY SUSPENDED with no possibility for reinstatement for a minimum period of one year from the date that this proposed decision becomes a final decision. In order to obtain reinstatement after that time period has elapsed, Respondent may make application to the Board in accordance with the provisions of 282 Iowa Administrative Code 11.34.

IT IS FURTHER ORDERED that Respondent shall receive a written reprimand.

IT IS FURTHER ORDERED that prior to any reinstatement of his teaching license, Respondent must undergo a substance abuse evaluation and submit the results of that evaluation, including any recommendations for treatment, to the Board.

IT IS FURTHER ORDERED that Respondent shall successfully complete at least fifteen in-person contact hours in "Ethics for Educators," a course offered by the ISEA. Respondent is responsible for all costs associated with the completion of the course. Respondent shall provide the Board with proof of completion of the course prior to any application for reinstatement.

Dated this 2<sup>nd</sup> day of September, 2020.



David Lindgren  
Administrative Law Judge

cc: Michael Yauney (First Class Mail)  
Mike Cavin, Board of Educational Examiners (Electronic Mail)  
Jesse Ramirez, AG (Electronic Mail)  
Jay Hammond (Electronic Mail)  
Kim Cunningham (Electronic Mail)

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**NOTICE:**

Pursuant to 282 Iowa Administrative Code 11.28, any adversely affected party may appeal a proposed decision to the Board within 30 days after issuance of the proposed decision. The notice of appeal must be in writing and signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify the parties initiating the appeal, the proposed decision or order appealed from, and the specific findings or conclusions to which exception is taken and any other exceptions to the decision or order, the relief sought, and the grounds for relief.

**BEFORE THE BOARD OF EDUCATIONAL EXAMINERS  
OF THE STATE OF IOWA**

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In the matter of	)	Case No. 20-13
	)	Folder No. 1028407
MICHAEL YAUNEY,	)	
	)	NOTICE OF HEARING
Respondent.	)	AND STATEMENT OF CHARGES

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**YOU ARE HEREBY NOTIFIED** that the Iowa Board of Educational Examiners, exercising the jurisdiction conferred by Iowa Code chapters 17A and 272, has found probable cause of a violation of Board rules and ordered this matter scheduled for hearing.

**A. TIME, PLACE AND NATURE OF HEARING**

1. Hearing will be held on Thursday, August 27, 2020, before Administrative Law Judge David Lindgren, acting on behalf of the Iowa Board of Educational Examiners. The hearing shall begin at 9:00 a.m. in Department of Inspections and Appeals, Wallace State Office Bldg, Third Floor, 502 E. 9<sup>th</sup> Street (East 9th and Grand Avenue), Des Moines, Iowa. You should report to the third floor Iowa Department of Inspections and Appeals' (DIA) receptionist prior to 9:00 a.m. to obtain the room assignment.

2. Answer. Within twenty (20) days of the date of service of this Notice of Hearing, you are required to file an Answer specifically admitting, denying, or otherwise responding to the allegations included within the Factual Allegations. In that Answer, you should also state whether you will require an adjustment of the date and time of the hearing. A copy of the Answer shall be provided by the Respondent to the Assistant Attorney General identified below.

3. Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 282 Iowa Administrative Code chapter 11. At hearing, you may appear personally or be represented by an attorney, at your own expense. You will be allowed the opportunity to respond to the charges against you. Each party will be allowed to testify, examine and cross-examine witnesses, and present documentary evidence. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence. If you need to request an alternative time or date for hearing, you must comply with the requirements of 282 Iowa Administrative Code rule 11.19.

If either party wishes to present telephonic testimony or to participate in the hearing by telephone, arrangements must be made at least ten (10) days in advance of the hearing date by filing a written request with the presiding Administrative Law Judge, Department of Inspections and Appeals, Wallace State Office Building, Des Moines, Iowa 50319, or by faxing a written request to (515) 281-4477. A copy of the

request for telephonic testimony must be served on the Board and all parties. Any resistance to the request for telephone testimony must be filed within five (5) days of service of the notice.

4. Pre-hearing conference. Either party may request a pre-hearing conference to discuss evidentiary issues related to the hearing. The Board rules regarding pre-hearing conferences are found in 282 Iowa Administrative Code rule 11.18.

5. Prosecution. The office of the Attorney General is responsible for prosecuting and representing the public interest (the State) in this proceeding. Pleadings shall be filed with the Board and copies should be provided to counsel for the State at the following address:

Jesse Ramirez  
Assistant Attorney General  
Iowa Department of Justice  
2<sup>nd</sup> Floor, Hoover State Office Building  
Des Moines, Iowa 50319  
Telephone (515) 281-3395

6. Communications. You may not contact Board members by phone, letter, facsimile, e-mail, or in person about this Notice of Hearing or the pending charges. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve on all parties in the case. You should direct any questions about this proceeding to Michael D. Cavin, the Board's Interim Executive Director, at (515) 281-5849 or to Assistant Attorney General Ramirez at (515) 281-3395.

## **B. SECTIONS OF STATUTES AND RULES INVOLVED**

### **Count I**

7. Respondent is charged with being on school premises or at a school-sponsored activity involving students while under the influence of, possessing, using, or consuming alcohol, in violation of 282 Iowa Administrative Code rule 25.3(2)(b)

## **C. JURISDICTION AND LEGAL AUTHORITY**

8. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 17A and 272. If any of the allegations against you are proven at hearing, the Board has authority to take disciplinary action against you under Iowa Code chapters 17A and 272, and 282 Iowa Administrative Code chapter 11.

#### D. FACTUAL CIRCUMSTANCES

9. Respondent holds a Standard LICENSE (FOLDER # 1028407) with the following endorsements: K-12 Athletic Coach; 5-12 Biological Science; 5-12 Chemistry; 5-12 Basic Science; 5-12 All Science. This license is current and will next expire on May 31, 2024.

10. During all material events of this case, Respondent was employed as a science teacher with the Council Bluffs School District.

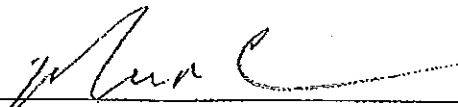
11. On January 27, 2020, the Board of Educational Examiners received a complaint against Respondent alleging various violations. On or about April 17, 2020, the Board found probable cause to proceed to hearing based upon the facts set forth herein and delineated in further detail within the complaint and investigation file compiled by the Board.

12. Investigation revealed that on or about January 14, 2020 Respondent was under the influence of alcohol while on school grounds during school hours while acting in his official capacity as a teacher. Respondent tested positive for alcohol during the investigation.

#### E. SETTLEMENT

13. This matter may be resolved by surrender of your license or an agreement to accept a lesser sanction. The procedural rules governing the Board's settlement process are found at 282 Iowa Administrative Code rule 11.4(6). If you are interested in pursuing settlement of this matter, please contact the Assistant Attorney General identified in Section A, above.

Dated this 14<sup>th</sup> day of May, 2020.

  
Michael D. Cavin, Interim Executive Director  
Iowa Board of Educational Examiners

Copies to:

Michael Yauney (first-class mail and certified mail)  
RESPONDENT

Jay Hammond (electronic mail)  
ATTORNEY FOR RESPONDENT

Jesse Ramirez (electronic mail)  
ATTORNEY FOR THE STATE